

# **LOWER PAXTON TOWNSHIP ZONING HEARING BOARD**

Meeting of August 22, 2013

## Members Present

Greg Sirb  
Jeff Staub  
Sara Jane Cate  
Alan Hansen  
Watson Fisher

## Also in Attendance

James Turner  
Dianne Moran

## Docket 1342

Applicant: Warren Lee Swanger

Address: 5012 Utah Avenue  
Harrisburg, PA 17109

Property: 5012 Utah Avenue  
Harrisburg, PA 17109

Section 307.A Dimensional requirements in an R-2 Medium Density Residential District

A2) With both Township approved central water and Township approved sewage services: The minimum side yard setback requirement shall be one side yard with a minimum width of 5', provided the total of both side yards is a minimum of 15 feet.

The Applicant proposes a carport that will encroach into the side yard setback

Grounds: Section 307

Fees Paid: July 19, 2013

Property Posted: August 13, 2013

Advertisement: Appeared in The Paxton Herald on August 7, 2013 and August 14, 2013.

The hearing began at 7:02 p.m.

Mr. Sirb questioned if the applicant agreed to submit a copy of the site plan and application to the Township as exhibits. Mr. Swanger answered yes.

Mr. Sirb swore in Warren Lee Swanger, 5012 Utah Avenue, Harrisburg, PA 17109.

Mr. Sirb wore in Dianne Moran, Zoning and Hearing Officer for Lower Paxton Township.

Mr. Sirb questioned if the appropriate fees were paid for this application and was the property posted. Ms. Dianne Moran advised that the appropriate fees were paid on July 19, 2013. The proper advertisements appeared in The Paxton Herald on August 7, 2013 and August 14, 2013. The hearing notices were posted on August 13, 2013.

Mr. Sirb questioned what variance the applicant is seeking for Docket 1342. Ms. Moran answered Section 307.A Dimensional requirements in an R-2 Medium Density Residential District. With both Township approved central water and Township approved sewage services: The minimum side yard setback requirement shall be one side yard with a minimum width of 5', provided the total of both side yards is a minimum of 15 feet. The Applicant proposes a carport that will encroach into the side yard setback.

Mr. Sirb requested Mr. Swanger to tell the Zoning Hearing Board why his variance should be granted.

Mr. Swanger noted that the carport would be a convenience for him, now that he and his wife are getting older, to have the car protected so when he goes out he would not be in the ice and snow and rain to get in and out of the vehicle. He noted that the neighbors on both sides have carports and they used them extensively for entertaining year round when weather permits. He noted that it would be a nice comfortable place to entertain since he is retired and has more time to do that. He explained, when he looked at this development, as he lives behind the Municipal Center, there are many other neighbors that have carports or garages that have a similar circumstance with the setback. He noted that they were built before the new codes were adopted, they were granted variances, or they did not bother to get permission. He noted that he does not want to circumvent the process; he wants to do it properly. He explained that he has been in construction for 44 years and would be doing the work himself.

Mr. Turner requested Mr. Swanger to describe the proposed setbacks provide a description of what the carport would look like. Mr. Swanger answered that everyone should have a drawing that he provided, however, one was drawn in color. He noted that the blue lines indicate the boundary between his house and his neighbor. He explained what is drawn in purple represents his home and the green lines show the existing driveway and patio that wraps around the back of the house. He noted that the overlay is in orange that shows the proposed framing. He noted that he provided a written description of each stage of the construction, how it would be built, information on the footers, using six by six posts, beams set into the posts and set in with carriage bolts. He noted that he will sandwich plywood in between before he nails it to provide additional strength to the beam. He explained that looking at other places in the neighborhood, there are none that he has found that were built with 2 x 10 beams and 2 x 8 rafters. He noted the heaviest he has seen was 2 x 8 rafters. He noted that some people have put two together, but they still are inferior. He noted that he feels that he wanted to use the heavier materials as his car will be parked under the carport and he does not want it to fall around his ears. He explained that it will be built properly. He noted that there will be 2 x 8 rafters with 2 x 4's

below allowing him an area to attach the soffit. He noted that the 2 x 4's and 2 x 8's will be tied together to create a truss.

Mr. Swanger reported that there are two letters in the packet from the Michaels who reside at 5010 Utah Avenue and Victor Bucharew from 5091 Carrollton Drive. Mr. Sirb questioned if the Michaels' would be the most affected by this project. Mr. Swanger answered that Mr. Bucharew would be the one most affected. Mr. Sirb noted that he would be the neighbor inside the boundary. Mr. Swanger answered yes, noting that he was in favor of it. He noted that he would be the neighbor that he would be encroaching toward the common boundary. He noted that he has been nothing but supportive and explained that there is a tree in the way, and Mr. Bucharew is removing the tree so it won't be a hindrance to the project.

Mr. Swanger noted that he has a carport, the Michaels' have a carport and he included pictures of both carports. He explained what he intends to build will encroach the Bucharew home as it will wrap around the back of the house where the Michaels' is just a straight carport.

Mr. Sirb questioned Ms. Moran if the house is set in the setback. Ms. Moran answered that he only has three feet now. Mr. Swanger noted that it is only three feet now and he wants to put 12 inch piers and if he does that he would only have two feet from the neighbor's property. He explained that he showed Mr. Bucharew the drawing and he has no problem with it either. He noted that the second drawing that he provided tonight only has the measurements but he wanted to show the height and the slope of the rubber roof, and stated that he should have included that in the original packet. He noted that the propeller is a ceiling fan and he plans to install two. Mr. Turner noted for the sake of the record he would label the drawing as Applicant's Exhibit A.

Mr. Swanger explained that he sat down with a building inspector for an hour to look over things and he was very helpful and made some suggestions that he hadn't thought about.

Ms. Cate noted that someone is building an addition down the street now. Mr. Swanger noted that it is very similar to what his situation is as they only have a three foot setback. He noted that their carport is different as it will be a little steeper and shingled whereas he plans to slope his roof into two directions. He noted if you look at the framing drawing, you can see a ridge going down through the center, slopping the roof in two directions. He noted that the slope is about 5/8 of an inch per foot, and it will drop eight inches throughout the 14 feet.

Mr. Jeff Staub noted for this part of the Township, it seems like the Board receives this request on a fairly regular basis and it has granted everyone that he has recalled.

Ms. Cate noted that the addition that is under construction now was granted by the Board a couple months ago.

Mr. Sirb questioned Mr. Swanger if he had anything more to add. Mr. Swanger answered no. He noted that the packet he provided was self explanatory for the step-by-step construction process. He noted that he knows construction and it will not be shabbily built. He noted that

most of the carports have posts made up of a 4 x4 on top of a 6x6. He noted that it will be very well supported.

Mr. Sirb questioned Ms. Moran if the Township had a position on the variance. Ms. Moran answered no.

Mr. Sirb questioned if any board members had any additional questions

Mr. Sirb questioned if anyone in the audience wished to comment on Docket 1342. No response was heard.

Mr. Sirb noted that the Board has 45 days to render a decision and questioned if the Board would like to make a motion on Docket 1342.

Mr. Swanger questioned how long it takes to get the variance. Mr. Turner noted about 60 seconds.

Ms Cate made a motion to grant the application for Docket No. 1342 as presented. Mr. Hansen seconded the motion. Mr. Turner conducted a roll call vote: Mr. Fisher, aye; Mr. Hansen, aye; Mr. Staub, aye; Ms. Cate, aye; and Mr. Sirb, aye.

Mr. Swanger questioned how long it would take before he could get the building permit. Ms. Moran noted that you must wait for the decision from the attorney and it takes about 30 days. Mr. Turner noted that the decisions are signed at the next meeting of the Zoning Hearing Board which would be four weeks from tonight. Mr. Swanger questioned if there was a way to speed it up as he already lost the months of July and August. He noted that he just missed the meeting in July. Mr. Turner reported that he could prepare the decision but it would be up to the Board members if they could find the time to stop in the Municipal Center to sign the paperwork.

Mr. Swanger noted that he would be willing to do the building permit with the stipulation that if there would be a problem, he would stop construction. He noted that the only person who would have a legitimate complaint would be his neighbor who has already signed that he is fine with the project. Mr. Turner noted that the Township waits for the decisions and he will prepare the decision within the next week to get it to the Township. Mr. Swanger thanked the Zoning Hearing Board for its time.

The hearing ended at 7:15 p.m.

Respectfully submitted,

Maureen Heberle  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
WARREN LEE SWANGER : DOCKET NO. 1342

### **DECISION GRANTING VARIANCE**

The applicant seeks a variance from minimum side yard setback requirement in connection with the erection of a carport. A hearing on the application was held on August 22, 2013.

#### **Facts**

1. The applicant and owner of the property in question is Warren Lee Swanger of 5012 Utah Avenue, Harrisburg PA 17109.
2. The property in question is situate on the north side of Utah Avenue and consists of a rectangular lot, approximately 60 feet wide and 125 feet deep. The property is improved with a single family dwelling known as 5012 Utah Avenue. The parcel is zoned Residential, R-2, Medium Density.
3. The applicant proposes to erect a carport on the side of the exisintg dwelling a side yard setback of three feet would be maintained.
4. The applicant has discussed his project with the adjoining property owners who indicated their approval of the project in a writing presented to the Board.
5. Notice of the hearing was posted and advertisement made as required by the ordinance.
6. No one other than the applicant appeared to testify either in favor of or against the proposed variance.

### **Conclusions**

1. Section 307.A of the ordinance requires a minimum side yard setback of 5 feet and an aggregate setback of 15 feet. The proposed carport would violate this section of the ordinance.

2. Article 111.D.3 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the property in question is burdened by a hardship consisting of its limited lot width which predates the ordinance. This factor makes it impossible to make any improvement to the side of the existing dwelling which already intrudes upon the setback.

4. Granting the variance will not alter the essential character of the neighborhood nor be contrary to the public welfare. The proposed improvement is comparable to many other carports which have been constructed in the neighborhood. The existing pattern of development on the property intrudes upon the setback and the carport follows that pattern. The improvement will enhance the value of the property and increase its functionality.

**Decision**

In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that a variance should be and is hereby granted allowing the erection of a carport with a minimum setback of two feet. In all other respects, construction shall be in strict conformity with the plans and testimony presented to the Board.

Date: 9/6/13

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

\_\_\_\_\_  
Gregory P. Sirb

SJCate  
\_\_\_\_\_  
Sara Jane Cate

[Signature]  
\_\_\_\_\_  
Jeffrey W. Staub

[Signature]  
\_\_\_\_\_  
Allan A. Hansen

[Signature]  
\_\_\_\_\_  
Watson Fisher

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of August 22, 2013

**Members Present**

Greg Sirb  
Jeff Staub  
Sara Jane Cate  
Alan Hansen  
Watson Fisher

**Also in Attendance**

James Turner  
Dianne Moran

**Docket 1343**

**Applicant:** Patricia Rinebold  
**Address:** 4210 Locust Lane  
Harrisburg, PA 17109  
**Property:** 4201 Locust Lane  
Harrisburg, PA 17109

Section 306.B.1. Allowed Uses in Primarily Residential Zoning Districts. A Family Day Care Home is not a permitted use in the R-1, Low Density Residential District.

Section 403.D.5.e If four (4) or more children are cared for who are not related to the primary caregiver, then a minimum of four hundred (400) square feet of exterior play area shall be available, surrounded by a six (6) feet high secured fence.

The Applicant seeks a variance for a family day care home to be permitted at 4210 Locust Lane. The Applicant seeks to secure the play area with a fence that is four (4) feet in height.

**Grounds:** Section 307  
**Fees Paid:** August 2, 2013  
**Property Posted:** August 13, 2013  
**Advertisement:** Appeared in The Paxton Herald on August 7, 2013 and August 14, 2013.

The hearing began at 7:16 p.m.

Mr. Sirb questioned if the applicant agrees to submit a copy of the site plan and application to the Township as exhibits. Ms. Rinebold answered yes.

Mr. Sirb swore in Patricia Rinebold, 4201 Locust Lane, Harrisburg, PA 17109.

Mr. Sirb noted that Dianne Moran, Planning and Zoning Officer for Lower Paxton Township was previously sworn in.

Mr. Sirb questioned if the appropriate fees were paid for this application and was the property posted. Ms. Moran advised that the appropriate fees were paid on August 2, 2013. The proper advertisements appeared in The Paxton Herald on August 7, 2013 and August 14, 2013. The hearing notices were posted on August 13, 2013.

Mr. Sirb questioned what variance the applicant was seeking for Docket 1342. Ms. Moran answered Section 306.B.1. Allowed Uses in Primarily Residential Zoning Districts. A Family Day Care Home is not a permitted use in the R-1, Low Density Residential District. Section 403.D.5.e If four (4) or more children are cared for who are not related to the primary caregiver, then a minimum of four hundred (400) square feet of exterior play area shall be available, surrounded by a six (6) foot high secured fence. The Applicant seeks a variance for a family day care home to be permitted at 4210 Locust Lane. The Applicant seeks to secure the play area with a fence that is four (4) feet in height.

Mr. Sirb questioned if the applicant has the 400 square feet of exterior play. Ms. Rinebold answered yes. Mr. Sirb noted that the Board is looking to grant two variances.

Mr. Sirb requested Ms. Rinebold to tell the Zoning Hearing Board why her variance should be granted.

Ms. Rinebold noted that she sent a diagram of the property and also has pictures. She showed pictures of the driveway area which shows plenty of parking spaces. She noted that not all daycare parents come at the same time. She explained that she can watch three children at her house but she is only seeking the variance for child four, five and six. She noted that there are several pictures showing the driveway, noting that her property has an alley that goes from Locust Lane to Cambridge Street. She noted that the pictures will show the distance from the driveway and where it comes out. She noted that it shows where her driveway cuts off from the alley, noting that she can park multiple cars at that location.

Ms. Rinebold noted in regard to her fencing variance, she currently has a privacy fence on the one side by Locust Lane and she is putting a privacy fence on the other side as well. She noted that the garage borders her property so she will be using the garage as part of the boundary area, but from the garage to the pavilion, she is asking for the four foot variance because it is right in the middle of her property. She noted that the property extends far back beyond that to the neighboring property on Cambridge and did not want a six foot fence in the middle of her yard. She noted that she could not financially afford to fence the entire yard with a six foot fence. She noted that is what the pictures show stating that she would leave the pictures with the Board Members.

Ms. Rinebold stated that she has a signed paper from 30 of her neighbors including everyone who borders her property and all who utilize the neighborhood that they are aware of

her interest in doing a day care and by signing the sheet they acknowledged that the meeting was tonight and they are supportive of the fact that she wanted to have children in her home. She noted that they were told that they could come to tonight's meeting to express any concerns.

Mr. Sirb questioned if a person can watch three children in a home without a variance even if it is zoned R-1. Ms. Moran noted in any residential district it is a permitted by right use to have three children in a home. Mr. Sirb noted that the variance is for three additional children. Ms. Moran answered yes. Mr. Sirb noted that she would be watching three children. Ms. Rinebold answered that was correct.

Ms. Rinebold noted that she is located across the street from Davis Nursery and there is a dentist office down the road, but her little section at this time is zoned R-1. She noted that she is only asking for the variance for child four, five and six.

Mr. Sirb questioned if the three children that Ms. Rinebold is currently watching were related to her. Ms. Rinebold stated that she does not have three children but she is working on that. She noted that she is just starting the process but she could take three children. She noted that she has one child that will be starting on Monday. She stated if the Board members knew of anyone who was looking for daycare, she would appreciate if they sent them her way. She noted that she has done this for 30 years and she did it in the Township in the past but for the past ten years she had moved and has just moved back into the area trying to get things started again.

Mr. Turner noted for the sake of the record, he would identify the pictures that Ms. Rinebold presented as Exhibits A-O with the signed petition being Exhibit P.

Mr. Sirb noted that the application shows that Ms. Rinebold is not the owner of the property. Ms. Rinebold answered that she is renting the property and stated that she has a letter from the landlord of the property of her interest in doing child care. She explained that they have given her permission to do the daycare as long as she has liability insurance and things like that. Mr. Sirb questioned if she had the permission to build the fence. Ms. Rinebold answered yes. She noted that it does not state in the letter that she has permission to build the fence but she noted that the landlord understood the regulations.

Mr. Turner noted that a daycare is regulated by the Department of Public Welfare (DPW). He questioned if they have regulations regarding the height of the fence. Ms. Rinebold answered no, noting in some places they don't require a fence due to rural conditions but for the most part they generally want a secured area or a safe area. She stated that DPW does not have a height requirement.

Mr. Sirb requested Ms. Rinebold to show the secured area on the picture. Mr. Turner requested Mr. Sirb to identify the picture he was looking at. Mr. Sirb answered that it was picture I. Ms. Rinebold noted that the wooden fence was the neighbor's fence, and it goes the entire length of the property line. She showed the rear of the yard and explained if she put a six foot fence in the middle of the yard she would not be able to see the rear of her property. She noted that it is quite a bit of property, and it is a nice piece of property. She explained, at the pavilion is where she would close off for the daycare, from the pavilion forward. She noted that it is much

more than the required amount of space for children at this time. She noted that she would like to stop the fence at the pavilion on this side and the other picture shows a chain linked fence. Mr. Sirb questioned who owns the chain link fence. Ms. Rinebold answered that she had that put in for her dogs that are housed in a separate area, putting up a four foot fence to separate the dogs from the children. She noted that the dogs are fenced off, but they don't have to be because she doesn't have vicious dogs, but she fenced it off separately as a safety precaution for the children. She noted that the children will have a lot of space and the dogs will be confined to another area. She noted that she has a six foot fence with one in the front going over to the garage, using the garage as a boundary and behind the garage she has a pavilion, so the fencing will go from the garage to the pavilion. Mr. Sirb noted that it would be a six foot fence. Ms. Rinebold explained that is the fence that she is seeking the variance for. She noted in the front it will be a privacy fence and in the middle of her yard she is asking for a four foot chain link fence. Mr. Hansen questioned about the front. Ms. Rinebold noted that a privacy fence towards Locust Lane will be completely private. Ms. Moran questioned the front yard fencing. Ms. Rinebold answered that it is not a front yard fence; it is from the back corner of her home to the garage, but not in the front of the property. Ms. Moran noted that she wanted to confirm that it was not in the front yard.

Ms. Rinebold explained that the fence will start in the back corner and will not be in the front of the house but come over to the garage so there will be no fencing in the front of the property. She noted from the back corner of the house to the garage and then from the garage to the pavilion is the area that she is asking for the four foot fence. She noted that her property abuts with the back neighbor's lot.

Ms. Cate questioned why she could not put up a six foot fence. Ms. Rinebold answered that she could but it is right in the middle of the yard and detracts from enjoying the rest of the yard with a six foot high fence. She noted that she hoped, in years to come, that she would be able to financially afford to fence the entire property, but she can't do that at this time. Ms. Rinebold suggested that the four foot fence would be safe enough as there is no danger to require the six foot fencing.

Mr. Hansen noted that Ms. Rinebold is located on Locust Lane. Ms. Rinebold answered that Locust Lane is to her front but she has a privacy fence at the rear corner of the house that is six foot high. Ms. Cate questioned if it is the entire way across. Ms. Rinebold noted that it will go to the garage with a gate at the driveway, a six foot fence with a six foot gate. She noted that the neighbor has a six foot fence. Ms. Cate questioned if the six foot fence is wooden or chain linked. Ms. Rinebold answered that it is wooden.

Mr. Sirb noted that the variance for the four foot fence is in the back. He questioned what the distance is for that. Ms. Rinebold suggested that it was 45 feet. She noted when she looked at it, if she got kennel fencing, she would need a little bit more than kennel fencing and it was approximately 40 plus feet. She noted that she could have used the kennel fencing, but she was a little reluctant in using dog fencing for children.

Mr. Hansen questioned what is the age of the oldest child that Ms. Rinebold will be watching. Ms. Rinebold noted that unless she had children before or after school, the oldest

child that she would have is five. She noted that the child that is starting on Monday is nine months old.

Mr. Hansen questioned Ms. Rinebold if she would have parking for at least four vehicles. Ms. Rinebold answered that the parents don't all come at the same time, as many times you only have one or two people dropping or picking up children at a time. She stated that she has done this for many years and it is a rarity that you have ever have three parents show up at the same time. Mr. Hansen questioned where the parents will park at your garage. Ms. Rinebold showed her garage on the plan noting that she will have her vehicle in the garage so she will have room for four vehicles as well as the alley that has an additional area that is part of her private area. She noted that her garage is off of the alley so you can put four vehicles on the concrete pad and still have the area that veers off from the alley. Ms. Cate questioned if the people would enter the home from the gate next to the garage. Ms. Rinebold answered yes. She noted that there is quite a bit of distance as the dirt part is her property and the stone area is the alley.

Mr. Sirb questioned if there would be any parking issues with the plan. Ms. Moran answered no.

Mr. Staub questioned if there was an adequate area near the garage for the cars to turn around to go back to Locust Lane. Ms. Rinebold answered that the cars can go out the alley and come out on Cambridge Street and that will put them back out onto South Arlington Avenue which is why it was important to include everyone of the houses that utilizes the alley to see if there were any concerns. She noted that the people did not have a concern with cars going back the alley to Cambridge Street to exit, providing for a one-way traffic flow. Mr. Staub questioned if the clients would be instructed to do that. Ms. Rinebold answered that they will be made to do that before she accepts them as she will not have them trying to pull in on Locust Lane and then pull back out onto Locust Lane. She explained that it is a safety issue and she will direct them to use the pattern she suggested to provide for one-way direction for traffic to keep it from being a mess. She noted that she does not want to have issues with her neighbors, and it will make it a lot easier.

Mr. Sirb questioned Ms. Rinebold if she had any further testimony.

Ms. Cate questioned Ms. Rinebold if she had any children. Ms. Rinebold answered that she had five children that are all grown and out of college. She noted that she has grandchildren. Ms. Cate questioned if they lived locally. Ms. Rinebold answered yes. Ms. Cate questioned if she watched any of her grandchildren. Ms. Rinebold answered from time to time as she has two grandchildren. Ms. Cate questioned if they would be part of the group that she will watch. Ms. Rinebold answered, possibly for a regular full time situation but she is allowed to include those in her ratio. She noted that the ratio is for six unrelated children but she only has two local grandchildren. She noted that it would be a blessing to see them from time to time as she has lived out of the area for the first five years of their lives.

Mr. Sirb questioned if board members had any additional questions.

Mr. Staub noted in reading the application, the ordinance does not limit how many children can be at the house. He noted that Ms. Rinebold could have an unlimited number of children and add four to it. He thought that it was interesting, not that most people have six kids anymore. Ms. Rinebold noted that is exactly correct as DPW states, for a family daycare home she may have six unrelated children. She noted when she was a mother of five, it made no sense to her why she could have 11 children in her home and her neighbor could only have six because five of them were hers. She noted that she lives alone with no children or grandchildren living with her. Mr. Turner noted that it would be tough for the Township to pass an ordinance regulating how many children you could have in your house.

Mr. Sirb noted that his concern is the first item, noting that the fence is not as important, other than a safety issue. He noted that he always struggles when it is in the R-1 district and someone is asking for a business. Ms. Rinebold questioned even though David Nursery is directly across the street from her, and a dentist office is less than three blocks away. She noted that Davis Nursery has signed her paper that they don't have any issues and they recognize that they are in an R-2 zone and she is in an R-1 zone.

Mr. Sirb questioned Ms. Moran if the Township had a position on the variance. Ms. Moran answered no.

Mr. Sirb questioned if anyone in the audience wished to comment on Docket 1343. No response was heard.

Mr. Sirb noted that the Board has 45 days to render a decision and questioned if the Board would like to make a motion on Docket 1343.

Mr. Staub noted that the key to him for this application has to do with the neighbors and the fact that Ms. Rinebold provided testimony that they are all in support of it. Mr. Sirb agreed with Mr. Staub on that comment.

Mr. Staub made a motion to grant the application for Docket No. 1343 as presented. Mr. Fisher seconded the motion. Mr. Turner conducted a roll call vote: Mr. Fisher, aye; Mr. Hansen, aye; Mr. Staub, aye; Ms. Cate, aye; and Mr. Sirb, nay.

The hearing ended at 7:36 p.m.

Respectfully submitted,

Maureen Heberle  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
APPLICATION OF : TOWNSHIP ZONING HEARING BOARD  
PATRICIA RINEBOLD : DAUPHIN COUNTY, PENNSYLVANIA  
: DOCKET NO. 1343

### **DECISION GRANTING VARIANCE**

The applicant seeks a variance to operate a family day care home in an R-12 Residential District and to limit the height of the fence surrounding the designated play area to 4 feet. A hearing on the application was held on August 22, 2013.

#### **Facts**

1. The applicant and lessee of the property in question is Patricia Rinebold, of 4210 Locust Lane, Harrisburg PA 17109. The property in question is owned by William and Kathryn Saltzer of 2012 Georgeanna Ct, Jarrettsville, MD 21084.

2. The property in question is situate on the north side of Locust Lane and consists of an irregularly shaped lot with a total lot area of approximately  $\frac{3}{4}$  of an acre. The property is improved with a single family dwelling, a detached garage, and a pavilion. The property is zoned Residential, R-1, Low Density.

3. The applicant proposes to operate a family day care home on the premises with a maximum of six children under the applicant's care. A play area as required by the ordinance would be created, which the applicant proposes to surround with a 4' high chain link fence. This fencing would tie into an existing 4' chain link fence on the property. The front of the rear yard along with the eastern line of the rear yard is enclosed with a 6' tall privacy fence.

4. The applicant has four parking spaces available for use by customers of the child care business. The applicant's vehicles would be kept in the detached garage.

5. Notice of the hearing was posted and advertisement made as required by the ordinance.

6. No one other than the applicant appeared to testify either in favor of or against the proposed variances.

### **Conclusions**

1. Section 306.B.1 of the ordinance establishes the permitted uses in the R-1 zoning district. A Family Day Care Home is not a permitted use. Section 403.D.5.e requires that where 4 or more children are cared for by a non-relative a minimum 400 square foot play area surrounded by a 6' tall fence must be provided. The proposed use and fence height for the play area would violate these sections of the ordinance.

2. Article 111.D.3 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the property in question is burdened by a hardship not created by the owner consisting of the existing pattern of development in the neighborhood. The property immediately across the street is commercial and other commercial uses are in the vicinity which limits the appeal of the property for strictly residential uses.

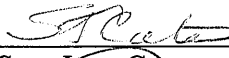
4. Granting the variance will not alter the essential character of the neighborhood nor be contrary to the public welfare. The applicant has sufficient parking so that the additional three children will not impair surrounding properties. The large size of the lot further diminishes the impact of the variance. The applicant testified that a 4' fence is adequate for safety purposes and the safety regulations of the Department of Public Welfare will be met. A six foot high fence will be maintained along the portion of the yard which faces the public street.

**Decision**

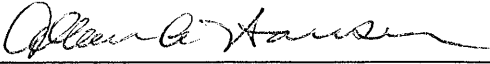
In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variances requested should be and are hereby granted allowing the establishment of a Family Day Care Home with a maximum of six children unrelated to the caregiver and with a play area which is surrounded by a fence of at least 4' in height.

Date: 9/6/13

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

  
Sara Jane Cate

  
Jeffrey W. Staub

  
Allan A. Hansen

  
Watson Fisher

Board Member Sirb dissents from the decision of the Board.